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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CALIFORNIA COALITION FOR WOMEN
PRISONERS et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA
FEDERAL BUREAU OF PRISONS et al.,

Defendants.

Case No. 4:23-cv-04155-YGR

**PLAINTIFFS' ADMINISTRATIVE
MOTION PURSUANT TO CIVIL L.R. 7-
11 FOR INCREASED ATTORNEY
VISITATION BEFORE THE JANUARY 3
EVIDENTIARY HEARING**

Pursuant to Civil L.R. 7-11, Plaintiffs respectfully move the Court for an emergency order directing Defendants to allow for adequate visitation time with Plaintiffs' counsel so that they and anticipated witnesses may have the opportunity to meaningfully prepare for the multiday Preliminary Injunction Evidentiary Hearing scheduled to begin on January 3, 2024 ("Evidentiary Hearing"). Plaintiffs urgently seek relief from the Court because Defendants have rejected Plaintiffs' requests for meaningful counsel access to the facility in the days leading up to the Evidentiary Hearing, instead insisting that Plaintiff's counsel should be limited to only four hours of dedicated legal visitation time on January 2—a patently unreasonable amount of time given that the hearing is anticipated to involve dozens of witnesses. Moreover, Defendants have refused to provide substantive responses to serious concerns raised by Plaintiffs' counsel that (1) FCI Dublin continues to fail to provide truly private and confidential meeting spaces for counsel, contrary to Defendants' recent sworn submissions to the Court; and (2) individuals and potential witnesses who have recently met with counsel since the Court set the Evidentiary Hearing have been conspicuously and inexplicably targeted by strip searches, cell searches and confiscation of legal papers, and suddenly announced transfers to other facilities.

Accordingly, Plaintiffs move for an Order requiring Defendants to provide Plaintiffs' counsel adequate access to FCI Dublin, including its satellite prison camp, to meet privately and confidentially with Plaintiffs and incarcerated witnesses in the days leading up to the Evidentiary Hearing as follows: (1) for at least 4 hours each on December 31, 2023, and January 1, 2024, and (2) for the period of 9:00 a.m. to 5:00 p.m. on January 2, 2024.

I. STATEMENT OF FACTS

As part of the parties' conferral about legal access to FCI Dublin in the days leading up to the Evidentiary Hearing, on December 21, Plaintiffs' counsel requested the equivalent of two days' of visits, asking for access on January 2, the day before the Evidentiary Hearing begins, and indicating flexibility for additional access between December 30 and January 1. Declaration of Susan Beaty ("Beaty Decl."), filed herewith, Ex. 1 at 1. This was consistent with Plaintiffs' counsel's earlier request for access during this holiday weekend leading into the Evidentiary Hearing, to which the Government still had not made a substantive response. Ex. 3. In response to Plaintiff's December 21 request, the FCI Dublin Executive Assistant informed Plaintiffs' counsel that legal visitation would

1 be provided only on January 2 between 9 a.m. and 1 p.m. Ex. 1 at 1. The Executive Assistant further
 2 stated that Plaintiffs’ counsel may otherwise enter FCI Dublin on December 30, December 31, and
 3 January 1 as part of the general social visitation population, during which “the facility cannot
 4 guarantee privacy/confidentiality.” *Id.* (explaining social visitation processing occurs from 7:15 a.m.
 5 to 9:30 a.m., 11:00 a.m. to 12:30 p.m.).

6 In light of the fact that such conditions are insufficient to allow Plaintiffs to meaningfully
 7 prepare given the number of witnesses involved, Plaintiffs’ counsel thereafter contacted Government
 8 counsel on December 28 requesting “access to the facility for legal visitation (1) for at least 4 hours
 9 on December 31 and January 1, during a period that does not coincide with social visitation hours;
 10 and (2) for the period of 9:00 a.m. to 5:00 p.m. on January 2,” explaining that Plaintiffs would seek
 11 relief from the Court if this request could not be accommodated. *Id.*, Ex. 2 at 1-2.

12 Plaintiffs’ counsel also re-requested a substantive response to concerns first raised on
 13 December 19 and December 23 about incidents of retaliation against individuals speaking with
 14 Plaintiffs’ counsel that have occurred following the Court’s determination that an Evidentiary Hearing
 15 was necessary, specifically:

- 16 (1) prison staff have inexplicably begun strip-searching any incarcerated person who chooses
 17 to meet with Plaintiffs’ counsel—a practice that has never occurred in the seven years
 18 members of Plaintiffs’ legal team have been visiting FCI Dublin (with the exception of a
 19 short period in March 2023 when the prison conducted such searches twice immediately
 20 after BOP received a litigation demand letter from counsel)—leading to at least one
 21 individual declining to participate in the visitation despite a desire to do so;
- 22 (2) one incarcerated person who met with counsel had her cell searched for over an hour,
 23 despite not receiving any write-up, and found upon her return that her locker had been
 24 opened and her legal paperwork, including copies of previous PREA grievances, had been
 25 taken without documentation;
- 26 (3) just hours after a legal visit with Plaintiffs’ counsel, three individuals, including two
 27 identified to the Government as Plaintiffs’ witnesses, were suddenly told that they would
 28 be transferred, without warning and during the holidays.

1 *See id.* at 2-3. Plaintiffs’ counsel additionally requested a substantive response to longstanding
 2 concerns about lack of provision of private and confidential spaces during legal meetings. *See id.*
 3 Plaintiffs’ counsel accordingly requested that the Government provide “assurances that any
 4 individual who wishes to participate in [legal] meetings will be able to do so without reprisal and in
 5 a private and confidential manner.” *Id.* at 2.

6 Later on December 28, the Government responded by refusing Plaintiffs request for two
 7 business days’ of legal access, suggesting that phone contact should otherwise suffice, despite
 8 significant issues with the pilot legal phone program. *Id.* at 1¹; Ex. 3 at 2 (explaining that, under the
 9 pilot program, each dorm shares a single legal phone, those phones are only operational during certain
 10 hours, and attorneys must disclose specific client names and often face long delays to have their
 11 numbers approved). The Government also asserted in conclusory fashion that “there are no barriers
 12 to adequate access,” despite conceding that the “attorney pod” meeting spaces that the Government
 13 had previously cited in its opposition to the motion for preliminary injunction as proof of adequate
 14 legal access (*see* ECF No. 45-5 at 15, 24, ECF No. 46 at 12), were in fact “off line.” *Id.*

15 **II. ARGUMENT**

16 Defendants should be ordered to afford Plaintiffs’ counsel access to Plaintiffs and other
 17 witnesses in the days leading up to the Evidentiary Hearing consistent with Plaintiffs’ proposed
 18 schedule of the equivalent of two business days. Given the sensitive nature of potential testimony,
 19 and the aforementioned limitations of the pilot legal phone system, in-person visitation is necessary
 20 to adequately prepare for the Evidentiary Hearing. Plaintiffs’ proposal is also reasonable given the
 21 needs of the Evidentiary Hearing and the number of witnesses that will be potentially involved, and
 22 Defendants’ refusal to accommodate this reasonable request is inconsistent with the Government’s
 23 own regulations and other guidelines.

24 Plaintiffs’ counsel’s only remaining opportunity for in-person access to prepare for the
 25 Evidentiary Hearing are during *non-private, non-confidential* general social visitation hours on
 26 December 30, December 31, and January 1, and one legal visitation block on January 2 from 9:00
 27

28 ¹ Because Defendants oppose Plaintiffs requested relief, no stipulation pursuant to Civil L.R. 7-12
 could be obtained.

1 a.m. to 1:00 p.m. (during which private attorney pods will not be available). This is insufficient for
2 Plaintiffs to adequately prepare for the Evidentiary Hearing, which requires counsel to meet with a
3 large number of potential witnesses and to do so in person to make informed preparations in advance
4 of in-person testimony.²

5 Moreover, Defendants’ insistence that they need only provide minimal, non-private access in
6 face of the particular, unique circumstances here—an Evidentiary Hearing set by the Court in a matter
7 of weeks—runs directly counter to the requirement that the Government “may not limit the frequency
8 of attorney visits since the number of visits necessary is dependent upon the nature and urgency of
9 the legal problems involved.” 28 C.F.R. § 543.13. Defendants’ position similarly conflicts not only
10 with Department of Justice recommendations, which state that the Bureau of Prisons “should enhance
11 access to in-person legal visits,” especially in the context of “particularly important meetings,”
12 Advisory Group of DOJ Components, *Report and Recommendations Concerning Access to Counsel*
13 *at the Federal Bureau of Prisons’ Pretrial Facilities* (2023) (“Access to Counsel Report”), available
14 at https://www.justice.gov/d9/2023-07/2023.07.20_atj_bop_access_to_counsel_report.pdf, at 3, 18,
15 but also FCI Dublin’s own handbook, which stresses that attorney visits should be flexibly arranged
16 “based on the circumstances of each case,” FCI Dublin Inmate Admission & Orientation Handbook
17 (2023), available at https://www.bop.gov/locations/institutions/dub/dub_ao-handbook.pdf?v=1.0.2,
18 at 32.

19 Undoubtedly, “impediments to legal visitation, including long wait times, inconsistent visiting
20 protocols, and lack of space to speak confidentially, can negatively impact the attorney-client
21 relationship and diminish the effectiveness of counsel.” Access to Counsel Report at 15. Recognizing
22 this fundamental principle, the BOP has acknowledged that “[t]he Warden shall provide the
23 opportunity for pretrial inmate-attorney visits on a seven-days-a-week basis” and that such visits
24
25

26 ² To add to the complexity, the Government informed Plaintiffs on December 27 that it would be
27 calling five incarcerated individuals during the Evidentiary Hearing but declined to identify them
28 by name until December 29. Beaty Decl., ¶6. Plaintiffs’ ability to respond to this development by
speaking with individuals at the prison would be significantly curtailed by the limited number of
hours of counsel access the Government proposes.

“may be conducted at times other than established visiting hours.” BOP Program Statement No. 7331.04, available at <https://www.bop.gov/policy/progstat/7331.05.pdf>, at 19.³

Accordingly, Plaintiffs respectfully request that they and their Evidentiary Hearing witnesses be afforded private, confidential visitation with Plaintiffs’ counsel for at least 4 hours on December 31, 2023, and on January 1, 2024, and (2) for the period of 9:00 a.m. to 5:00 p.m. on January 2, 2024. This additional access for private, confidential attorney visitation is necessary given the significance of the Evidentiary Hearing and is narrowly tailored because it requests only the minimum amount of additional confidential in-person access necessary to adequately prepare for the Evidentiary Hearing.

Dated: December 28, 2023

Respectfully submitted,

By: /s/ Stephen Cha-Kim
Stephen Cha-Kim

RIGHTS BEHIND BARS

**CALIFORNIA COLLABORATIVE FOR
IMMIGRANT JUSTICE**

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³ While these authorities specifically apply to incarcerated individuals awaiting criminal trials, there is no discernable reason why these principles should not apply with equal force here.